886, the "Six Little Tailors" procured an injunction estraining another firm from doing business under the name of "Six Big Tailors." And the end is not yet. Injured traders will be forced to seek the aid of the law until doomsday unless the code of business morality prevalent among a large class of our citizens becomes greatly changed. The cases on the subject are surprisingly numerous. The whole topic was treated at length, with full citation of authorities, in Mr. Mitchell's article in the last number of the REVIEW.

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INTERSTATE COMMERCE AND THE POLICE POWER. — Two recent decisions of the United States Supreme Court raise again the vexed question of what are the limits of a State's power of legislation in matters touching interstate commerce. *Illinois Cent. R. R. Co.* v. *State of Illinois*, 163 U. S. 142, holds unconstitutional a local statute which compels all trains to stop at county seats. The court properly rests its opinion on the ground that such an enactment, though purporting to be a police regulation, was in reality a most unreasonable interference with interstate commerce, unnecessarily delaying fast mail trains, and oftentimes forcing them to go several miles out of their regular route. (See *Henderson* v. *Mayor of the City of New York*, 92 U. S. 259, 268.)

The other and more important case of *Hennington* v. *State of Georgia*, 163 U. S. 299, decides that a State law forbidding the running of freight trains on Sunday is valid, although its effect is to prevent interstate trains from passing through the State on that day. The decision was not a unanimous one. But this was hardly to be expected in view of the previous divisions of the same court on similar questions. *Bowman* v. *Chicago & Northwestern Ry. Co.*, 125 U. S. 465; *Leisy* v. *Hardin*, 135 U. S. 100; *Plumley* v. *Commonwealth of Massachusetts*, 155 U. S. 461. And the difference of opinion existing upon the precise question decided in *Hennington* v. *State of Georgia* is well illustrated by the fact that, in the only two instances in which this exact point has hitherto come before the courts, the decisions have been squarely opposed to each other. *State* v. *R. R. Co.*, 24 W. Va. 783; *Norfolk & Western R. R. Co.* v. *Commonwealth*, 88 Va. 95.

The *ratio decidendi* advanced in the principal case is, that the Sunday law was a legitimate exercise of the State's acknowledged power to protect the health and morals of its own citizens, and that it affected interstate commerce only incidentally. In determining the extent of a State's authority in matters which concern the commerce of other States, it seems to be generally admitted that, if Congress has passed laws on the same subject, these are superior to any State statute. Cooley, Const. Lim., 6th ed., 722, 723. But the point of difficulty is where, as in *Hennington* v. *State of Georgia*, and as is generally the fact, Congress has been silent. How far can the State then go in enacting such laws as relate to foreign or interstate commerce? Two tests by which to answer this question have been suggested. The first makes the intention of the State legislature the final criterion. It says that, if the object of the legislature is simply to promote the physical or moral welfare of the local community, then no matter what the real consequence upon commerce may be, the law is merely a police regulation and therefore valid. See article in 1 HARVARD LAW REVIEW, 159. This theory, however, in the light of recent decisions, can hardly be said to have been

received with favor. The operation of the law rather than the object of the legislature is the important consideration. The other test, which has been acted upon by the courts, and which may be regarded as well established, is this. Is the subject matter of the law of such a nature as to admit only of one uniform system throughout the country? If so, the power of Congress to enact laws is absolutely exclusive. But if the subject is one which does not require national uniformity, one upon which different regulations would be suitable, varying according to the diverse interests and conditions of particular places, the State may legislate. *Cooley* v. *Board of Wardens*, 12 How. 299, 319. As an application of this principle, State legislation on the subject of quarantine, inspection regulations, and the construction of bridges over navigable streams, is held constitutional, though such legislation directly affects interstate commerce.

Now, accepting this last test as the correct one, who is to decide whether the subject covered by a State statute needs national or local treatment? The determination of this question should rest with the Federal Legislature. For the answer turns on many considerations of practical expediency, which are pre-eminently matters for legislative investigation. Since Congress by the express terms of the Constitution is given the power to regulate commerce among the States, it seems that Congress, and not the courts, should have the supervisory action over such State legislation as has to do with interstate commerce. It may then be doubted whether the judiciary should interpose in any given case to pronounce a State regulation of commerce unconstitutional, unless it appears beyond a doubt that the subject of legislation is one requiring national uniformity, leaving to Congress its undoubted right to annul the effect of the law by its own subsequent enactments. 2 Thayer's Cases on Constitutional Law, 2190, 2191.

It is true that the court has not always taken this position, as is shown by the great case of *Leisy* v. *Hardin*, *supra*. But the more recent decisions of *Plumley* v. *Commonwealth of Massachusetts*, *supra*, and *Hennington* v. *State of Georgia*, seem to indicate that perhaps that case is in danger. The *personnel* of the United States Supreme Court has changed much in the six years since *Leisy* v. *Hardin* was decided. Four of the six judges then in the majority are no longer on the bench. Is it not possible that the court is gradually getting away from that decision, — that the judges who were then in the minority, and who would seem to have been right on principle, are now gaining the upper hand?

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# RECENT CASES.

CARRIERS — LIABILITY OF OWNERS OF STEAMBOATS AS INNKEEPERS. — The plaintiff, a passenger on the defendant's steamboat, had upon his person $160 in money for the expenses of the journey. On retiring he left this money in his clothing in the stateroom, and during the night it was stolen, without any negligence on his part. *Held*, that the defendant was liable for the loss, without any proof of negligence on its part. *Adams* v. *New Jersey Steamboat Co.*, 45 N. E. Rep. 369 (N. Y.).

The decision is rested on the ground that a steamboat is, in effect, a floating inn, and that therefore the common law rule making innkeepers insurers of the money and